

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRACY YVETTE SCOTT, . 4:20-CV-02261
PLAINTIFF, . HOUSTON, TEXAS
VS. . OCTOBER 19, 2020
MIKE BLOOMBERG 2020, INC., . 2:29 P.M.
DEFENDANTS. .
.....

TRANSCRIPT OF TELEPHONIC MOTION HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE PLAINTIFF:

Carroll G. Robinson
ROBINSON LAW GROUP
4203 Yoakum Boulevard
Suite 310
Houston, Texas 77006

FOR THE DEFENDANTS:

Rex D. VanMiddlesworth
THOMPSON & KNIGHT LLP
98 San Jacinto Boulevard
Suite 1900
Austin, Texas 78701

APPEARANCES - CONTINUED

ALSO FOR THE DEFENDANTS:

Meghan McCaig
Gregory W. Curry
THOMPSON & KNIGHT LLP
1722 Routh Street
Suite 1500
Dallas, Texas 75201

OFFICIAL COURT REPORTER:

Mayra Malone, CSR, RMR, CRR
U.S. Courthouse
515 Rusk
Room 8004
Houston, Texas 77002
713-250-5787

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1 **PROCEEDINGS**

2 *(All participants appeared by telephone)*

3 THE COURT: Good afternoon. This is Keith Ellison.
4 Welcome to all of you.

1 4 : 1 9 5 We will take appearances of counsel beginning
6 with plaintiff, please.

7 MR. ROBINSON: Carroll G. Robinson for plaintiff.

8 THE COURT: Thank you.

9 For defendant?

1 4 : 2 0 10 MR. VANMIDDLESWORTH: Good afternoon, Judge. This is
11 Rex VanMiddlesworth for defendant. And with me is Greg Curry
12 and Meghan McCaig.

13 THE COURT: Welcome to all of you. We are here on a
14 motion to remand and a motion to dismiss. Before I get into
1 4 : 2 0 15 the merits of either motion, let me just clarify a couple
16 questions -- a couple issues. There is some confusion about
17 how long Ms. Scott was paid. It looks as if she was paid
18 through March 31st. Is that correct, Mr. Robinson?

19 MR. ROBINSON: Yes, Your Honor.

1 4 : 2 0 20 THE COURT: Okay. And then in considering the motion
21 to dismiss, it's not entirely clear that we can rely on the
22 contract.

23 Does the plaintiff have any objection to our
24 incorporating the contract as something we can rely upon in
1 4 : 2 1 25 deciding the motion to dismiss?

1 MR. ROBINSON: Well, yes, Your Honor, because the
2 contract was not completely complied with. At this stage --

3 THE COURT: I'm not asking whether it is enforceable
4 or anything. I said is the document itself something we can
5 talk about in the motion to dismiss?

6 MR. ROBINSON: Yes, Your Honor. I'm amenable to that.

7 THE COURT: Okay. And then I notice in the original
8 complaint that was filed in state court, the petition, Scott
9 noted that she was proceeding individually on behalf of all
10 others similarly situated, but the rest of the pleadings didn't
11 refer back to that.

12 This is just a single-plaintiff lawsuit, isn't
13 it, Mr. Robinson?

14 MR. ROBINSON: Well, Your Honor, when we filed it down
15 in state court, we intended, because we have two other clients,
16 and we were ultimately hoping to recruit more. So we were
17 looking at this being a class action. There is also a case in
18 New York. I'm sure --

19 THE COURT: I know about that case. Yeah. Yeah.

20 MR. ROBINSON: And I think they have just recently
21 been certified for class action status by the magistrate on at
22 least one issue in that case.

23 THE COURT: Well, for today's hearing, I'm going to
24 treat this as an individual claim and not as a collective
25 claim.

1 The motion to remand, let's take that up first.

2 Anything, Mr. Robinson, you would like to add to
3 what's in the papers?

4 MR. ROBINSON: No, Your Honor. Not at this point.

5 THE COURT: It seems to me that the legal standard
6 is -- the summons in the plaintiff's complaint is taken at face
7 value, asserting good faith. Here we don't have a specific
8 amount alleged. And in those instances, to remove, the
9 defendant must prove by a preponderance of the evidence the
10 amount in controversy exceeds 75,000. It seems like the amount
11 that she is owed is, according to the allegations, something in
12 the neighborhood of 60 to 70,000, and attorneys' fees and
13 punitive damages are also being claimed. It seems to me that
14 reasonably assessing the allegations, there is more than 75,000
15 at stake. Is that not right, Mr. Robinson?

16 MR. ROBINSON: Well, Your Honor, in state court, it
17 would depend on how much the Court would ultimately award us
18 because we took the case on a contingency fee contract. And
19 under state case law, that would have to be proved up,
20 depending on what we finally won, against what portion of the
21 judgment we would be entitled to.

22 THE COURT: A conservative estimate of contingency
23 fees would be one third of recovery, wouldn't it? That's not
24 excessive.

25 MR. ROBINSON: If, under the Lone Star method, the

1 Court agreed with that.

2 THE COURT: Mr. VanMiddlesworth, do you want to add
3 anything to your opposition to the motion to remand?

4 MR. VANMIDDLESWORTH: Well, Judge, I was going to let
5 Mr. Curry deal with the remand issue.

6 THE COURT: Okay. Mr. Curry?

7 MR. CURRY: No, Your Honor. Just to point out that
8 under this Court's prior ruling, the settlement demands have
9 been appropriate evidence to consider, and here, that clearly
10 shows the amount of controversy is in excess of 75,000.

11 And the only other thing to note is on the
12 attorneys' fee issue, it's not what is ultimately awarded.
13 It's what is alleged, what it's alleged to be. So, yes, it may
14 be less than the amount -- some amount than they have alleged.
15 It would certainly put it over \$75,000, and health care
16 expenses, as well. I don't think there is much controversy
17 that we have met our burden to establish federal jurisdiction.

18 THE COURT: Yeah. I'm afraid I agree. I think that a
19 preponderance of the evidence standard in counting attorneys'
20 fees, I think the threshold is met. It's been held that a
21 removing defendant need not prove to a specific number the
22 amount of controversy, including attorneys' fees and punitive
23 damages. Only by a preponderance of the evidence does the
24 amount have to exceed 75,000. I think that's established Fifth
25 Circuit law. That's Manguno, M-A-N-G-U-N-O, versus Prudential

1 Property and Casualty, a Fifth Circuit decision in 2002.

2 Did somebody want to say something?

3 MR. ROBINSON: Yeah. This is Attorney Robinson.

4 It sounds like you are going to find that the
5 Court has subject matter jurisdiction, and if that's the case,
6 then I would like to ask the Court to move this case to New
7 York to be joined with the Woods case.

8 THE COURT: Well, you can certainly file a motion to
9 transfer. I think defendants are entitled to their day in
10 court on the motion to dismiss. It's been properly pleaded,
11 and if there is nothing to transfer, that kind of moots the
12 other motion.

13 So, Mr. Curry or Mr. VanMiddlesworth and -- I'm
14 sorry, I didn't catch the young woman's name -- do one of you
15 want to add anything to what's in the writings?

16 MR. VANMIDDLESWORTH: This is Rex VanMiddlesworth,
17 Your Honor.

18 I don't think I need to add a lot to it. This is
19 fairly straightforward. I will be happy to answer any
20 questions, but before complaint, promissory estoppel,
21 fraudulent inducement, breach of warranty or contracts, and
22 breach of warranty clearly is out because there is no sale of
23 goods and services. And the others I think fail as a matter of
24 law in light of the written contract, which says, in the middle
25 of page 1 of a one-and-a-half-page document, it's an employment

1 document. That we or you may terminate at any time. It may be
2 terminated with or without notice. It may be terminated for
3 any reason, or for no reason, and that no further payments will
4 be due. The written agreement could not be more clear. It's
5 not ambiguous in the least.

6 And as you know, promissory estoppel claims are
7 not permitted where there is an actual contract. It actually
8 doesn't matter whether it's the written one, as we assert, or
9 an alleged oral contract, there is still an agreement that
10 would preclude the promissory estoppel claim, fraudulent
11 inducement.

12 Again, Texas law is quite clear, as you are
13 aware, that fraudulent inducement requires that there be
14 justifiable reliance. And there can be no justifiable reliance
15 on an alleged promise of X, when there is a contract, the
16 contract itself says, Not X. You can't rely on a term that's
17 contradicted by the written agreement. Those cases are set
18 forth.

19 And on the breach of the oral agreement claim,
20 the fourth claim, that throughout negotiations, Ms. Scott was
21 told that she would be employed to November. Well, again,
22 there is a written agreement that covers -- governs this
23 employment relationship and the specific issue of how long the
24 employment will last. It says up front and repeatedly that it
25 can be terminated at any time. Again, it is well established

1 in Texas that parol evidence, extrinsic evidence about
2 statements contrary to a written contract, the unambiguous
3 terms of a written contract can't be introduced and,
4 accordingly, dismissal is appropriate for that. So we would
5 request 12(b)(6) dismissal on all counts, Your Honor.

6 THE COURT: Mr. Robinson?

7 MR. ROBINSON: Well, Your Honor, even by their own
8 response, they made the observation that after the fraud claim,
9 there is some basis to it. More importantly, under state law,
10 this is a contract that's -- their alleged written contract
11 that's performable in less than one year. So it is not the
12 four corners of the document.

13 More importantly, even on the facts in this case,
14 they paid the employees they terminated beyond the terms of the
15 written contract. They provided health care benefits beyond
16 the term of the written contract. And their essential argument
17 is, yeah, we said it, yeah, we allege we have a contract. We
18 kept saying it, and even though we allege we have a written
19 contract, we don't even have to comply with what we said was
20 the written contract. And we point all of these facts out in
21 the pleadings and across the documentation.

22 THE COURT: Help me understand why the contract is not
23 valid.

24 MR. ROBINSON: Well, for a couple reasons, Your Honor.
25 One, because they themselves didn't comply with what they

1 allege is the written contract. Because when they terminated
2 the employees, they went beyond the terms of the contract in
3 terms of compensation and health care benefit.

4 Second, under state law, the issue here is the
5 factual circumstances surrounding this. Prior to them
6 employing Ms. Scott and other employees but Ms. Scott, they
7 made an oral promise during the course of recruiting. They
8 made the same promise, and they even had her and other
9 employees pointing out that they would be employed until the
10 November election. And even when Bloomberg decided to shut
11 down his campaign, they promised that there would be employment
12 beyond -- until November, whether it was with Bloomberg 2020 or
13 some other entity.

14 So all along, the campaign itself has
15 contradicted what they claim to be the contract with the plain
16 and clear statement that you can be terminated at any time.
17 They consistently made the guaranteed promise that there would
18 be employment until 2020.

19 THE COURT: What I'm really looking for is a reason
20 the contract is not valid. The fact they paid your client more
21 than they were obligated to I don't think invalidates the
22 contract. And the fact that there were other promises out
23 there, I don't think that invalidates the contract either.
24 Maybe you can sue them for some promissory estoppel theory that
25 maybe is based on representations that were not in the contract

1 or made after the contract was entered, but I don't think any
2 of that invalidates the contract itself.

3 MR. ROBINSON: Your Honor, again, this is Carroll
4 Robinson for the plaintiff.

5 That's why we included that as one of the causes
6 of action in our original petition that was removed to federal
7 court.

8 THE COURT: That there were other representations
9 made?

10 MR. ROBINSON: Yes.

11 MR. VANMIDDLESWORTH: Your Honor, Rex VanMiddlesworth.

12 If I may, I encourage you to review the petition,
13 but it does say that there were representations made. And this
14 is a motion to dismiss, so we have to accept that allegation.
15 But even accepting that allegation, which we don't accept, of
16 course, for the merits but for purposes of the motion to
17 dismiss, the complaint asserts that those representations were
18 made over and over again and that in reliance to that
19 representation, the plaintiff entered into the agreement, the
20 written agreement. And there can be no promissory estoppel or
21 fraudulent inducement when a plaintiff enters into the
22 agreement that says, I can be terminated at any time. So the
23 agreement is valid. The facts alleged in the complaint do not
24 allege a cause of action because of the written contract.

25 MR. ROBINSON: Well, Your Honor, this is Carroll

1 Robinson again.

2 Even if a written contract in state law was
3 performable in less than a year and so the oral promises after
4 the contract modified the contract, that's the whole issue
5 here.

6 MR. VANMIDDLESWORTH: Your Honor, that's --

7 THE COURT: You think the written contract was
8 modified by subsequent representation? Is that right?

9 MR. ROBINSON: I'm sorry?

10 THE COURT: When you amend a written contract, you do
11 that in writing, don't you?

12 MR. ROBINSON: You should, Your Honor.

13 MR. VANMIDDLESWORTH: Your Honor, this is Rex
14 VanMiddlesworth.

15 I would note that we are dealing with the
16 complaint that has been filed, not whatever other thoughts the
17 plaintiff may come up with. And that complaint is clear about
18 what the action was: Paragraph 11, the conduct that induced
19 plaintiff to enter into employment; paragraph 15, his reliance
20 on these promises, the plaintiffs left their jobs to accept
21 these positions. In paragraph 20, they made representations to
22 induce plaintiff to go to work. Paragraph 22, those
23 misrepresentations caused plaintiff to accept a position.
24 Paragraph 28, plaintiff accepted employment based on being
25 employed through November.

1 So the complaint says promises were made that
2 induced the plaintiff to accept employment, and that's what the
3 reliance was. That's what she was induced to do, and Texas law
4 is clear that those prior contemporaneous statements, if they
5 were made, cannot be relied on to invalidate the terms of the
6 written agreement.

7 THE COURT: Here's what we are going to do. I'm going
8 to dismiss the promissory estoppel claim but without prejudice.
9 I'm going to dismiss the fraudulent inducement claim with
10 prejudice. I'm dismissing the breach of express warranty claim
11 and breach of oral contract claim without prejudice. So I will
12 give you a chance to replead the claims dismissed without
13 prejudice. I don't want to hold out a lot of hope though.
14 Texas law is always skeptical of agreements that are allegedly
15 made outside of a written contract, but I will give you one
16 more chance to plead that, Mr. Robinson.

17 If you want to file a motion to transfer, you can
18 do that. I think we ought to finish the motion to dismiss
19 before we transfer it though.

20 Thank you all very much for your participation.
21 You are excused. Thank you.

22 MR. ROBINSON: Thank you, Your Honor.

23 MR. VANMIDDLESWORTH: Thank you, Your Honor.

24 *(Court adjourned at 2:47 p.m.)*
25

* * * *

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled cause.

Date: October 21, 2020

/s/ Mayra Malone

Mayra Malone, CSR, RMR, CRR
Official Court Reporter